

Office of Chief Counsel  
Internal Revenue Service  
**memorandum**

CC:NER:CTR:HAR:TL-N-2225-00  
BAJohnson

date: April 11, 2000

to: Chief, Appeals Division, Connecticut-Rhode Island District

from: District Counsel, Connecticut-Rhode Island District

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subject: [REDACTED]

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By memorandum dated April 6, 2000, you requested that we provide advice as to whether a consent to extend the statute of limitations mailed to the taxpayer's representative after December 31, 1999, and which did not advise the representative of the taxpayer's rights under I.R.C. § 6501(c)(4)(B) may be salvaged through a second letter to the representative advising him of the rights, but to which he did not respond. It is our opinion that the consent, as signed, is not valid, and a new consent should be obtained.

The facts as you provided them are as follows. The statute of limitations for the taxable year [REDACTED] expires on [REDACTED]. By letter dated [REDACTED], Appeals Officer (b)(6) [REDACTED] mailed a consent to extend the statute of limitations, Form 872-A, to attorney [REDACTED], power of attorney for the taxpayer. The letter did not set forth any of the taxpayer's rights as required under I.R.C. § 6501(c)(4)(B). The representative apparently signed the consent and returned it to the appeals officer.

On [REDACTED], the appeals officer became aware of the fact that the earlier letter did not comply with the above statutory provisions. In an attempt to correct this problem, he

mailed the representative another letter by certified mail, dated [REDACTED], enclosing new Publication Form 1035 covering the changes made by the Restructuring and Reform Act of 1998. The letter stated in part,

If you would like to have the Consent modified or if you would like to have the Consent withdrawn, please notify me by letter or by facsimile message in the next 10 days. If I do not hear from you, I will conclude that you and the taxpayer are well aware of the taxpayer's rights in new Publication Form 1035 and are satisfied with the consent which we have executed.

The representative has not responded to this letter.

I.R.C. § 6501(c)(4)(B) provides that the Service must provide notice of the taxpayer's right to refuse to extend the period of limitations or to limit such extension to particular issues or to a particular period of time, on each occasion when the taxpayer is requested to provide such consent. There are no provisions for retroactively correcting a situation where the consent was sought without providing the statutory notice of rights. In discussing this matter with our National Office, they have only acquiesced in retroactive acknowledgment letters, drafted by Counsel, in exigent circumstances where there was an imminent expiration of the statute of limitations.

Accordingly, since there is sufficient time remaining before this statute expires, it is our opinion that the consent signed by the taxpayer's representative is void and a new waiver should be sought. If the representative refuses to sign a new waiver, the appeals officer should request that the representative sign a letter (drafted by Counsel) acknowledging that (1) that the Service has provided the representative notice of the taxpayer's rights under I.R.C. § 6501(c)(4)(B), (2) that the representative understands these rights, (3) that the taxpayer does not wish to exercise any of the rights conferred upon it by the statute, and (4) that the representative considers the previously-executed consent valid. If the representative refuses to sign the letter, then the appeals officer should protect the revenue and issue a notice of deficiency.

This opinion is based on the facts set forth herein. Should you determine that they are different, you should not rely on this opinion without concurring with this office. Further, this opinion is subject to ten day post-review procedure in our National Office. That review might result in modifications to the conclusions herein. Should our National Office suggest any

material change in the advice, we will inform you as soon as we hear from that office.

Should you have any further questions, you may contact me at 860-290-4090.

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BRADFORD A. JOHNSON  
Acting District Counsel